



Written by [Michael Tennant](#) on September 27, 2011

## ObamaCare Lawsuit Probably Heading to Supreme Court

A lawsuit challenging the constitutionality of ObamaCare appears to be headed for the Supreme Court, which could end up ruling on the case in 2012, just as President Barack Obama is running for reelection.



In August a three-judge panel of the 11th Circuit Court of Appeals [upheld](#) a Florida judge's ruling that the Affordable Care Act's individual mandate is unconstitutional. (The panel overturned his finding that the entire law is unconstitutional, however.) The Obama administration — the defendant in the case brought by 26 states and the National Federation of Independent Business — had the option of requesting a hearing by the entire 11th Circuit Court; but it chose not to do so by the September 26 deadline, which indicates that it is probably going to appeal directly to the Supreme Court.

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"If the court accepts the case before January," observes [Politico](#), "it is likely to be put on the calendar to be heard in the spring. A decision would likely be postponed until June." That would, of course, put it smack in the middle of an election year in which the prime architect of the law is one of the candidates, raising the question of why the administration chose not to seek a ruling by the full 11th Circuit, which probably would have delayed a Supreme Court ruling until 2013.

Former acting Solicitor General Walter E. Dellinger III (pictured above), who supports the law, told *Politico* that the move indicates that "the government is confident that it's going to prevail in the Supreme Court and would like to have a decision sooner rather than later."

Perhaps. But another possibility also presents itself, says the *Washington Post's* [Stephen Stromberg](#):

Pretend Justice had asked the 11th Circuit to reconsider and the appeals court took its time, pushing Supreme Court review into 2013. If Obama then lost his reelection bid, it could have fallen to a new Justice Department to defend the statute — one led by an attorney general appointed by a GOP president committed to unraveling the health-care law in every way he or she knows how. That hypothetical Republican administration could have decided to do what the Obama Justice Department did with the Defense of Marriage Act — offer no defense of the law at all.

In addition, the administration may have calculated that the full 11th Circuit would have either rejected its appeal or agreed with the three-judge panel. *Politico* remarks:

There are only five judges appointed by Democrats on the 11-judge circuit, and one them has



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already ruled to strike down the mandate. So far, many judges have ruled along the party lines of the president who nominated him or her. So it's unlikely the government would have gotten a better response out of the full panel.

Will the Supreme Court take up the appeal? *Politico* thinks it likely, noting that "the court rarely declines requests from the government to take a case, especially in situations in which a circuit court has struck down a piece of a high-profile law" and that the different decisions among appeals courts — the Sixth Circuit disagreed with the 11th Circuit on the individual mandate, and the Fourth Circuit declined to rule on the mandate until it takes effect in 2014 — also make a Supreme Court hearing probable. Ron Pollack, executive director of the pro-ObamaCare Families USA, told *Politico*, "The odds are pretty significant the court will take the case now."

If so, it will surely make for an even livelier election year, notes the [Los Angeles Times](#):

The fate of Obama's healthcare overhaul figures to be at the center of next year's presidential race. Republicans have been running on a promise to "repeal Obamacare." If the Supreme Court were to strike down Obama's signature law as an unconstitutional overreach by the president and a Democratic Congress, it could deal a damaging blow to the president's campaign for reelection.

However, if the justices were to uphold the law as a reasonable regulation of the nation's health insurance market, their decision would give a powerful endorsement to Obama's crusade for healthcare reform just when he most needs it. A pro-Obama ruling by the court would also badly undercut claims by "tea party" activists who contend federal regulation of healthcare is outside the bounds of the U.S. Constitution.

On the other hand, a ruling in favor of ObamaCare might just as easily galvanize Republicans, and especially Tea Party adherents, to seek Obama's defeat. If the highest court in the land says the law is constitutional, the next President will need to be willing to sign a bill repealing it and appoint justices who will overturn it if it reaches the Supreme Court again. A President who would not try to fight or undermine state nullification efforts would also be welcome.

No one, of course, can predict the outcome of a Supreme Court hearing. Obama's decision to appeal to the court so quickly could very well result in his defeat in the courtroom, at the ballot box, or both. Then again, the gambit might pay off in both venues, which would be good news for Obama — and bad news for both the Constitution and liberty.



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